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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/756,941	01/13/2004	Chiu K. Li	UTL 00354	3298
7590	07/05/2006		EXAMINER	
Kyocera Wireless Corp. P. O. Box 928289 San Diego, CA 92129-8289			RAMAKRISHNAIAH, MELUR	
			ART UNIT	PAPER NUMBER
			2614	

DATE MAILED: 07/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Advisory Action Before the Filing of an Appeal Brief</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/756,941	LI, CHIU K.
	Examiner Melur Ramakrishnaiah	Art Unit 2614

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 31 May 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1.  The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

a)  The period for reply expires 3 months from the mailing date of the final rejection.  
 b)  The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2.  The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3.  The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a)  They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b)  They raise the issue of new matter (see NOTE below);  
 (c)  They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d)  They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4.  The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5.  Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.

6.  Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7.  For purposes of appeal, the proposed amendment(s): a)  will not be entered, or b)  will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_.

Claim(s) objected to: \_\_\_\_\_.

Claim(s) rejected: \_\_\_\_\_.

Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8.  The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9.  The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10.  The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11.  The request for reconsideration has been considered but does NOT place the application in condition for allowance because: (See the enclosed explanation).

12.  Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). 2-17-2004

13.  Other: \_\_\_\_\_.

  
 Melur Ramakrishnaiah  
 Primary Examiner  
 Art Unit: 2614

**Response to Arguments in response to final rejection**

Rejection of claims 1-2, 4-6, 8 and 10-12 as being obvious over Oda (JP2003-032342A) in view of Ohnsorge (US PAT: 5,485,504):Regarding rejection of independent claims 1, 8, and 14 applicant argues that “The applicant submits that the independent claims 1, 8, and 14 each include, *inter alia*, the limitation that a communication device comprises “a housing including … a second side surface … being concave to generally follow a contour of a user’s face”. In order to establish a *prima facie* obviousness rejection, the examiner’s prior art must teach or suggest all claim limitations”. Applicant further continues: However, Oda and Ohnsorge, alone or in combination, do not describe or suggest a communication or wireless device having a second side surface being concave to follow the contour of user’s face, as recited in the amended independent claims”. Regarding this, Applicant misinterprets the teaching of Ohnsorge which teaches a radio telephone surface that is concave and generally follow user’s face (fig. 2, col. 2 lines 7-11). In light of this teaching of Ohnsorge, one of ordinary skill in the art at the time invention was made would be motivated to modify Oda’s second side surface of portable communication device, which includes a speaker (3a, Drawing 4) and a microphone (7a, Drawing 4), to be concave to follow the contour of user’s face so that user would be able to obtain better intelligibility of speech that is being exchanged between communication partners as taught by Ohnsorge. Applicant further argues that “Ohnsorge only describes “good intelligibility”, and not a structural limitation such as following the contour of the user’s face with a second side surface. “Intelligibility is not a structural limitation, it is used to describe a “quality” that is

associated with language. Additionally, “ensuring good intelligibility” is the goal of any communication device”. Regarding this, contrary to applicants interpretation of Ohnsorge reference, he specifically teaches the following: As can be seen in fig. 2, the two ends of the housing , where the electroacoustic transducers 2 and 3 are mounted behind corresponding sound apertures 9 and 10, may be inclined inwards to ensure good intelligibility (col. 2 lines 7-11). This clearly means shape of the handset to be concave which is structural property of the handset that facilitates good intelligibility of speech being exchanged between the communication partners.

Applicant further argues that “nowhere is ordinary skill in the art defined as being associated with a “quality” or goal such as “intelligibility”. additionally, a “quality” or goal does not rise to standard of a structural limitation, i.e. second side surface being concave to follow a contour of a user’s face”. Applicant further continues: “Fig. 2 of Ohnsorge only shows that the front surface of radiotelephone, instead of the side surface, is not integrally flat. In fact, the front surface which is illustrated in FIGs. 1 and 2 … video display and keypad and a third segment housing the microphone”. Notwithstanding applicants arguments above, Ohnsorge reference teaches concave surface of the side in which microphone and speaker are located as shown in fig. 1 to ensure good intelligibility. In light of this teaching of Ohnsorge, one of ordinary skill in the art at the time invention was made would be motivated to modify Oda’s second side surface of portable communication device, which includes a speaker (3a, Drawing 4) and a microphone (7a, Drawing 4), to be concave to follow the contour of user’s face so

that user would be able to obtain better intelligibility of speech that is being exchanged between communication partners as taught by Ohnsorge.

Applicant further argues that "If we were to follow the reasoning that one skilled in the art would combine Oda with Ohnsorge, this would be wholly inappropriate. Ohnsorge is a reference that teaches away from what is taught in Oda. Having, as the examiner states, "an arrangement ... would also ensure that a user's would come in closer contact with display due to this shape or arrangement. This, in turn exacerbate, if not cause, exactly the very technical problem what Oda is trying to avoid, namely keeping the display area clean. Therefore, one skilled in the art, knowing the teachings of both Oda and Ohnsorge, would not have been motivated at all to combine these references to arrive at applicant's claims because these references are contradictory and teach away from each other". Regarding this, Applicant is attempting to argue against individual references. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Regarding rejection of claims 3, 9, and 14-19, Applicant argues that "Since claims 3, 9, 14-19 include, *inter alia*, the limitation that a communication device comprises "a housing including ... second side surface ... being concave to generally follow a contour of a user's face, ". Applicant submits that cited references do not teach or suggest all

claim limitations of claims 3, 9, 14-19. Regarding this, explanation provided in response to applicant's arguments with respect to claims 1, 8 holds good.

Applicant further makes hindsight arguments regarding rejection of claims. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Regarding rejection of the claims, applicant after stating criteria to establish prima facie case of obvious rejection, alleges that none of the three criteria are met. Contrary to applicant's allegation that examiner has not made prima facie case of obviousness rejection, Examiner submits that the examiner has clearly made prima facie case of obviousness rejection as evidenced by explanation provided above in response to applicant's arguments.

Regarding the meaning of the word intelligibility, applicant says that he researched the meaning of this word such as: the quality of language that is comprehensible. That is not the only meaning of the word.

Here are the some of the meanings Examiner has found for intelligibility:

Speech intelligibility: the intelligibility of speech (usually measured in the presence of noise or distortion: WordReference.com English Dictionary).

Intelligible (adjective): (of speech and writing) clear enough to be understood (Cambridge I Dictionaries Online).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melur Ramakrishnaiah whose telephone number is (571)272-8098. The examiner can normally be reached on 9 Hr schedule.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curt Kuntz can be reached on (571) 272-7499. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Melur Ramakrishnaiah  
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Art Unit 2614